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**POLITICAL PATRONAGE:
A NEWLY TROUBLED TRADITION**

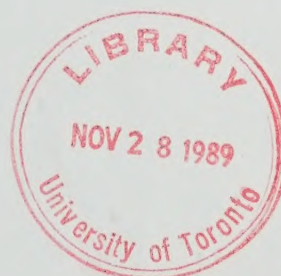
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POLITICAL AND SOCIAL AFFAIRS DIVISION
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POLITICAL PATRONAGE: A NEWLY TROUBLED TRADITION

INTRODUCTION

Political patronage, historians assure us, has a history as long if not as honourable as Canadian politics. Protests against patronage, they might add, are as old as the practice itself, although their substance has evolved over the years.

Early protests mingled indignation with a substantial component of envy, and were voiced largely by those temporarily deprived of access to patronage benefits following unfavourable election outcomes. Protest tended to cease with impressive punctuality upon the restoration of protesters to power, and their enjoyment of its more material advantages. While populist outrage was periodically voiced, the broader Canadian public displayed little concern about the patronage practices of its political leaders, with the exception of instances of major corruption. The flood of supplicating correspondence directed to elected officials would suggest, indeed, that lack of concern was tempered only by an alert attention to possible personal benefits.

More recently, however, there have been signs that the Canadian public, having lost much of its traditional access to benefits, is also abandoning its traditional tolerance. The highly publicized "you had an option" confrontation between Brian Mulroney and John Turner during the televised debates prior to the 1984 election was widely perceived to have had a significant impact on the election outcome. The widely alleged reversion of the newly elected Conservative government to traditional patronage practices during the initial phase of its first term was accompanied, perhaps not coincidentally, by a precipitous decline in its

public support. Media attention to patronage, during this period and more recently, has remained intense, and general concerns about trustworthiness and probity have surfaced, in polls, as major influences on patterns of political support.

Political patronage, in short, has emerged as an issue. This paper is intended to assist discussion of the subject by offering background information and analysis related to four central questions: What is patronage? How did patronage develop in Canada and what is its present status? What practices prevail in other countries and how do they compare with those in Canada? and What are the major possibilities for reform and how should they be evaluated?

WHAT IS PATRONAGE?

There is general agreement, in studies of patronage in Canada and elsewhere, that the granting of full or part-time paid employment or contracts to supporters of the government, primarily because of their political affiliations, constitutes a core definition of patronage.

This core definition has received, however, varying degrees of amendment. Colwell and Thomas restrict the application of the term to appointments, and distinguish between patronage appointments and political appointments: "By patronage we mean that positions of public responsibility are bestowed on political friends of the governing party for past political services rendered and without appropriate regard for the qualifications and competence of appointees to perform their duties effectively. In contrast, political appointments involve attention both to the merits of candidates and to their political orientation."⁽¹⁾

The question of whether merit was given appropriate consideration in making an appointment is avoided in a broader definition employed by James Q. Wilson. He enlarges the notion of patronage to include, implicitly at least, illicit benefits such as payment for votes,

(1) Randy Colwell and Paul Thomas, "Parliament and the Patronage Issue," Journal of Canadian Studies, Vol. 22, No. 2, Summer 1987, p. 163.

profit through insider knowledge of government contracts and commercial initiatives, and so on. Wilson's broader definition is: "'Patronage' is customarily used to refer to all forms of material benefits which politicians may distribute to party workers and supporters." (2)

Jeffrey Simpson similarly opts for a wide definition. In Spoils of Power, he defines patronage as "appointments, contracts and other measurable forms of preferment," leaving it implicit that such benefits are conferred by governing politicians upon government supporters. (3) The breadth of patronage, thus defined, is apparent in the comment that "a great deal of what is properly called patronage has nothing whatever to do with criminality, or even dubious morality." It is further apparent in assertions that patronage cannot be equated with inefficiency and the disregard for merit, although it may involve these things. Interestingly, Simpson argues as well that patronage extends beyond those relationships involving an individual patron and client:

Indeed, the notion of patronage, in essence a one-to-one relationship between patron and client, can be widened to include porkbarrelling, whereby political patrons may grant discretionary benefits to whole communities or regions as inducement or reward for political support. ... Put another way, porkbarrelling is patronage writ large, the exercise of political discretion to favour communities or regions on the basis of partisan considerations. (4)

If the selection of a definition of patronage served only to highlight a group of events to be investigated then it could be argued that it has no important consequences for what will be concluded about patronage and can be done more or less arbitrarily. The definitions reviewed above, however, do have consequences. The restrictive definition of Colwell and Thomas implies both that patronage is uniformly undesirable and that it is only one among a multitude of possible political relationships. The

(2) James Q. Wilson, "The Economy of Patronage," Journal of Political Economy, Vol. 69, No. 4, August 1961, p. 370.

(3) Jeffrey Simpson, Spoils of Power -- The Politics of Patronage, Collins, Toronto, 1988, p. 8.

(4) Ibid., p. 13

implication is that patronage both can and should be radically reformed, if not eliminated entirely.

Wider definitions allow us to apply the term "patronage" to significantly different kinds of relationship. They thus necessitate distinctions between differing kinds of patronage and reduce the sharpness of the contrast between patronage relationships and other kinds of political relationships. This tendency is apparent in Simpson's study. Ostensibly focused on patronage, it ranges widely across the areas of electoral corruption, profiteering by ministerial friends, kickbacks from the recipients of government contracts, and "patronage writ large" or old-fashioned porkbarrelling.

The assumption that patronage consists of a variety of activities which only loosely resemble one another breeds, as well, a tendency for the definition to expand. This may be illustrated by Simpson's introduction of the notion of "psychic patronage," which appears to be equated simply with personal attention from the patron.⁽⁵⁾ Patronage thus comes to be equated with almost any relationship in which something desired is awarded on the basis of political considerations. Not surprisingly, this leads Simpson to the view that patronage of some variety is central to politics, and that reformers should seek no more than that political patrons "practise craftily and judiciously this most demanding of the political arts."⁽⁶⁾

Given that important conclusions are at stake, how can one select a definition of patronage? The definitions just reviewed cite cases of patronage without telling us precisely what makes them cases of patronage. To remedy this shortcoming we need to identify the concept of patronage: what characteristics are necessary and sufficient to warrant an incident's being viewed as an instance of patronage.

Drawing on use of the term in anthropological studies, Canadian political scientist S.J.R. Noel describes patronage as a particular type of interaction between performers of two roles: that of "patron" and that of "client":

(5) Ibid., p. 335.

(6) Ibid., p. 378.

The essence of that interaction is a type of reciprocity: an exchange of mutually valued goods and services between those who are in some way unequal. Less abstractly, a patron is typically in a position to bestow upon a client some tangible benefit -- such as employment or other material reward, or (less tangibly) security, information or the opportunity to profit. In return a client is typically able to offer loyalty, personal service and acclaim in some context where these are of value to a patron -- as in politics, where they may take such forms as fund-raising, organizing, campaigning, "getting out the vote" or, at the very least, voting for the patron or the patron's chosen candidate.(7)

This description of patronage clearly favours a wide definition of the term. Patronage could be said to occur when anything mutually valued is conferred by a patron upon a client, in the reasonable expectation of an appropriate return or in recognition of a return already received.

Despite its width, Noel's definition is useful in distinguishing patronage from a related political phenomenon: porkbarrelling. Patronage involves an exchange between a patron and a client who share an approximate understanding of the reciprocal obligations involved. Porkbarrelling is only an attempt by a political agent to make a larger group of people behave like clients (i.e., give reliable support) in response to discretionary government spending. Porkbarrelling lacks a one-on-one relationship between patron and client, and their shared sense of "rules of the game" which define their respective roles. It is to these roles of "patron" and "client" and their evolution within the larger context of Canadian politics, that attention can now turn.

PATRONAGE PAST AND PATRONAGE PRESENT

The central importance of patronage during the early years of Confederation has been widely asserted by political historians. An historical exploration of Parliament Hill itself provides colourful support

(7) S.J.R. Noel, "Dividing the Spoils: The Old and New Rules of Patronage in Canadian Politics," Journal of Canadian Studies, Vol. 22, No. 2, Summer 1987, p. 73.

for this view.⁽⁸⁾ After bids were solicited in 1859, the contractor selected to construct the original Centre Block was one Thomas McGreevy of Quebec City, a Tory, architect, acquaintance of John A. Macdonald and close friend of Joseph Cauchon, a prominent Quebec Conservative. McGreevy's selection occurred despite his failure to abide by an explicit requirement of the Public Works Act that bidders submit an itemized schedule of projected costs.

Actual construction was overseen by a senior official of the Department of Public Works -- Samuel Keefer -- who happened also to be a Conservative. By the time of Confederation, the original cost estimates had been substantially exceeded and construction remained incomplete. One factor in cost overruns may have been the practice of charging continuously for "extra and additional" expenses as they arose, an approach enabled by the vagueness of McGreevy's original bid. Among these expenses were the costs of installing a heating system, which had inexplicably been omitted from the original estimates. Notwithstanding his billing methods, and burgeoning costs, McGreevy remained on the job after the 1867 election, in which John A. Macdonald was victorious. His eventual departure from the job was, indeed, merely the occasion for his succession by his brother, Robert McGreevy.⁽⁹⁾ The departure of Thomas did not, moreover, terminate his involvement in public service. In subsequent years, as Secretary of the Conservative party and long-time friend of Hector Langevin, Minister of Public Works, McGreevy supervised a quite durable arrangement in which contracts were let by the Minister in return for contributions to the Conservative party.

Patronage played an ubiquitous role in the nation-building projects of the post-Confederation years. This, however, was only because national leaders were able to integrate and adapt to national purposes patronage networks which preceded both Confederation and responsible government. Patronage thus did not arise as a political tool in response

(8) The following account is based on Douglas O'ram, Building for Canadians -- A History of the Department of Public Works, 1840-1960, Public Works Canada, Ottawa, 1979, p. 83-87. See also Simpson (1988), p. 88-89.

(9) O'ram (1979), p. 159.

to the demands of nation-building. It was already an entrenched social and political reality in the pre-Confederation colonies. The following provides an account of the origins and subsequent use of this efficacious device.

A. Patronage in the Colonies

Patronage in Canada began with European settlement, if not human habitation itself. The granting of lands by the colonial powers was an instance of patronage which settled, in the new territories, individuals equipped with the resources which allowed them to serve as local patrons. As the colonies were established, the patronage powers of the governor were, from the beginning, virtually constitutive of the government. The seigneurial system which prevailed in New France placed the governor at the head of a pyramid of patron-client relationships through which effective power was exercised. The replacement of the French by the British saw little initial disturbance of the centralization and hierarchy implicit in these arrangements.

The extensiveness of the discretionary powers exercised by the governor by the early 1800s is apparent in the following list of appointments made by the governor of Upper Canada. The governor virtually appointed executive and legislative councillors, judges of the King's Bench and heads of executive departments. He also appointed all the officers of the legislative council and assembly (with the exception of the Speaker), a sheriff in each district, justices of the peace, registrars of the counties, clerks of the peace and commissioners of customs. In addition to nominating immigration officers, he appointed 1,500 militia officers, the members of district boards of education and, after 1828, the whole of the Indian establishment. As well, Crown Reserves were at his command for pensions and aid to churches and other institutions, and, after the founding of King's College and Upper Canada College, the governor appointed their staffs. At the core of the governor's power was control of the Civil List -- the list specifying payments to government officials, pensioners and others favoured by the governor. Simpson provides an illustration of the width of gubernatorial discretion in the composition of such lists:

that of Governor Dalhousie of Lower Canada included a number of people, such as the widow of the former governor of Detroit, who did not even reside in the colony.(10)

The width of the governor's discretionary powers readily brought him the continuing allegiance of groups of families -- known as the "château clique" in Quebec, the "family compact" in Upper Canada, and the "governor's cliques" in the Maritimes -- who were primary recipients of patronage. These families provided the membership of the executive council and, in turn, maintained their position at the head of colonial society through the use of patronage powers conferred by the governor. The entrenched power of these cliques, and their disproportionate enjoyment of patronage benefits, emerged in the nineteenth century as a major source of the resentments which would precipitate agitation for responsible government.

Notwithstanding the convictions of beneficiaries that it embodied a higher mission (the preservation of order in colonies riven by religious, national and personal discord), the system of gubernatorial patronage sowed the seeds of its own destruction. Resentment of the privileges enjoyed by members of the governors' cliques led early reformers, such as MacKenzie and Papineau, to contemplate enviously the republican institutions and decentralized patronage system of the United States. While the dismantling of centralized patronage did not find favour with the majority of Canadians, resentment of the control of patronage by gubernatorial cliques bred growing pressures for reform. This strain of resentment was also recognized in the famous report of Lord Durham, who described the grip of the family compact on government offices as a "monopoly of power so extensive and so lasting [that it] could not fail, in the process of time, to excite envy, create dissatisfaction, and ultimately provoke attack."(11)

As pressures for reform grew during the mid-nineteenth century, governors in Lower Canada and the Maritime colonies came to adopt

(10) Simpson (1988), p. 41.

(11) Gerald Craig, ed., Lord Durham's Report: An Abridgement, McClelland and Stewart, Toronto, 1963, p. 54-55.

progressively more direct forms of intervention in the electoral process. Patronage appointments provided various means of oblique influence, such as Metcalfe's procurement of a satisfactory verdict in a controverted election hearing by offering a reformist committee member three Prince Edward County patronage posts in return for his resignation.⁽¹²⁾ Governors' candidates could also benefit, during an election, from using a range of methods of illicit influence. Among these were: bribery, treating, personation, the disenfranchisement of reform voters and the issue of land patents to enfranchise voters with more desirable proclivities, the intimidation of voters on election day, the sending of government troops to selected constituencies, and the gerrymandering of constituency boundaries.

The long-term effect of interventionism by the governors was to undermine the status of the governor as a non-partisan figure, and thus lead to pressures for reform. The capacity of the governors to intervene also provided further evidence to support the conviction already held by advocates of reform, that "patronage is power" and that durable dominance in the assemblies could only be achieved if the patronage power could be removed from the hands of the governors. It finally (as Metcalfe discovered in the election which followed his confrontation with the Baldwin-Lafontaine ministry over who should exercise the power of appointments) made the governor a creature of his popularly elected allies.

De facto responsible government, which emerged in the final years of Metcalfe's administration, became an acknowledged reality under his successor, Lord Elgin. The mid-winter elections of 1847-1848 marked a watershed in Canadian political history. They saw the Reformers replace the Tories in power in the Canadas, and the governor acquiesce fully in patronage appointments advised by the new government.

B. Patronage in the Post-Confederation Years

The two decades prior to Confederation saw, in all the British North America colonies, the elected assemblies assume control over the networks of centralized patronage which had evolved before the

(12) John Garner, The Franchise and Politics in British North America, 1755-1867, University of Toronto Press, Toronto, 1969, p. 206.

emergence of responsible government. The parties remained loosely affiliated coalitions of assemblymen, however, without the degree of internal unity needed to enable durable control of the assemblies as they exercised their newly acquired patronage powers.

What would emerge as the solution to the weakness of the parties in the post-Confederation period was discernible, from the 1850s onward, in John A. Macdonald's systematic use of patronage to broaden the base of the Tory party. Recognizing that the emergence of responsible government had moved ultimate power from the hands of the governor to the constituencies, Macdonald realized that partisan allegiance at the local level had become the key to lasting electoral success.

Rejecting the restrictive hold on patronage of the Family Compact Tories, Macdonald complained in 1847 that they "... cannot abide promotion or employment of any one beyond their pale." He undertook to replace their highly personal approach to the distribution of patronage with a systematic approach which ensured that benefits flowed only to those who had provided dedicated service to the party, and which directed the efforts of supplicants to party channels (elected members of the legislature or local party organizations) rather than to networks of more personal contacts.⁽¹³⁾ After Confederation, Macdonald's use of patronage played a central role in the creation of an alliance between Western Canadian Tories and Eastern Canadian "bleus" which would prove to be the foundation of party strength.

John A. Macdonald may be credited with the creation of the first of the Canadian "machine" type political parties -- organizations which were to dominate politics at both the federal and provincial levels for half a century. The central characteristics of the political machine are vividly captured by S.J.R. Noel:

It injected into the old political process, with its extreme decentralization, its dependence upon local patron-client ties, its endemic factionalism, and its weakly-cemented parliamentary alliances, a new and ultimately transforming instrument: a cohesive,

(13) Gordon T. Stewart, The Franchise and Politics in British North America, 1755-1867, University of Toronto Press, Toronto, 1969, p. 206.

hierarchical party organization that was without peer in the efficient use of patronage.(14)

The energetic expansion of patronage opportunities, as well as their systematic use, was characteristic of government at both the federal and provincial levels after Confederation. Illustrative of both of these tendencies was the implementation of the Franchise Act of 1885, which Macdonald, to the later puzzlement of some historians, referred to as "the greatest triumph of my life." (15) The Act established a uniform federal franchise in place of the various provincially established franchises which had been employed in federal elections since 1867. Its passage in the face of bitter opposition was, first of all, a demonstration of the success of Macdonald's efforts to weld what had been a loose agglomeration of factions and independent local notables into a modern disciplined party. The Act was also a bold step in subjecting disorganized patronage powers to systematic central management. In the course of planning and implementing the Act, Macdonald accumulated comprehensive information about county judges and barristers, thus enabling the subsequent appointment of only those election revising officers of demonstrated Conservative sympathies. The Act thus both significantly strengthened the Tory patronage network and endowed it with comprehensive electoral influence.

Another indication of the pervasiveness of patronage in the early decades of Confederation may be found in contemporary comments on the constitution of the public service. In 1877, a select committee, struck to investigate the condition of the service, concluded that "the exercise of patronage seems to be almost unchecked." The government, it was claimed, viewed the public service not as "an organization for conducting the public business [but rather] as a means of rewarding personal and political friends." (16)

(14) Noel (1987), p. 76.

(15) Cited in Gordon T. Stewart, The Origins of Canadian Politics -- A Comparative Approach, University of British Columbia Press, Vancouver, 1986.

(16) Ibid., p. 75.

As the comments of the select committee suggest, the pervasiveness of patronage did not, even in the early days of Confederation, engender its unanimous acceptance. The practical effectiveness of Macdonald's methods was, however, undeniable. The Grit-Liberal tradition of hostility to governmental interventionism (which implied a renunciation of its opportunities for expanded patronage) and overt distaste for patronage appointments was first abandoned in Ontario, where Oliver Mowat, beginning in 1872, constructed a Liberal machine which was to keep him in the premier's office until 1896.⁽¹⁷⁾ A stream of legislation transferred a range of licensing and regulatory powers from the municipalities to the provincial government, projecting its presence into the constituencies in the form of a growing body of provincially appointed commissioners, agents, inspectors and trustees. Good Liberals to a man, these patronage appointees were consistently partisan in the exercise of their powers, thus serving as intermediaries in a patronage network which extended down to the grassroots in every part of Ontario. Commenting specifically on the administration of liquor licensing regulations, contemporary observer Sir John Willison described the "rules of the game" as follows:

The liquor regulations were tempered to the behavior of licence-holders. An adequate display of zeal for the Government was a fair guarantee of security when licences were renewed. Inactivity was tolerated. Open rebellion was often punished.⁽¹⁸⁾

At the federal level between 1874 and 1878, the Liberal government of Alexander MacKenzie continued the practice of major patronage appointments, albeit with evident distaste, while alienating many of its own supporters with its tight-fisted rectitude concerning low-level patronage. MacKenzie's predictable defeat in 1878, and the consistent relegation of the Liberals to the opposition benches during the leadership of his successor, Edward Blake (who shared MacKenzie's distaste for patronage), contrasted strikingly with the success of Mowat's Liberals in Ontario.

(17) Noel (1987), p. 76 ff.

(18) Cited in Noel (1987), p. 78.

reliance of businessmen on government contracts, favours and special arrangements for particular sectors, and fostered symbiotic relations in the undertaking of the great transportation projects of the immediate pre- and post-Confederation years. The Canadian environment thus fostered the further entrenchment of patronage practices established long before Confederation.

C. Patronage in the Modern Era

World War I marked a watershed in the evolution of patronage practices. Prime Minister Robert Borden had responded to Laurier's 1911 offer of political truce for the sake of the war effort with a pledge that military appointments and contracts would be made on a non-partisan basis. Borden's minister responsible for the militia and procurement -- Sam Hughes -- continued, however, to administer both in the traditional way.⁽²⁴⁾ The arrival of Canadian troops overseas was rapidly followed by reports of inadequate clothing and equipment, and mounting fatalities. At home, allegations of profiteering triggered a public outcry, demonstrating that the costs of war had brought an end to Canada's peacetime tolerance of patronage, and placing the government under growing political pressures.

In 1915, an initial attempt was made to detach partisanship from military procurement with the establishment of a war purchasing commission. The departure in disgrace of Sam Hughes from the government in 1916 and the formation, in 1917, of a Union Government committed to bipartisan cooperation in the war effort were followed by an election in which the pursuit of efficiency was a major issue and in which the government committed itself to the merit principle in civil service appointments. In February 1918, the reelected Union government brought the civil service outside Ottawa, which had previously been almost wholly staffed through patronage appointments, under the jurisdiction of the Civil Service Commission. Shortly after this, the government introduced the

(24) Simpson(1988), p. 123 ff.

Civil Service Act, which broadly established merit as the central criterion for public service hiring and promotion.(25)

While it recognized meritocratic principles, the Civil Service Act of 1918 left a number of loopholes which remained until well into the modern era. Furthermore, controversy surrounding its implementation and early administrative bungling, gave opponents of these principles a pretext for a degree of erosion of the Act, which occurred with passage of legislation in 1921 and subsequent removal of a range of positions from the jurisdiction of the Civil Service Commission. Erosion of a different kind occurred following the election of Mackenzie King in 1921, with his appointment of two Liberal Commissioners who favoured increased departmental, and hence ministerial, discretion in the selection of employees.(26)

The Civil Service Act thus by no means instantaneously expunged patronage from the public service, nor did it even launch a process tending consistently to this end. It is generally recognized, however, as having been a major turning point in the development of the merit-based public service. While tensions between the Civil Service Commission and practioners of patronage were to continue through the 1920s and 1930s, by the 1940s most full-time public service positions were staffed through bureaucratic processes.

The gradual displacement of patronage by bureaucracy has continued since that time, fostered by the size and complexity of the modern public service, requirements for more specialized and technical skills, unionization, and increased public and bureaucratic intolerance of overt political interference. The case of postmasters illustrates both the transition and its gradual pace. During the 1940s, postmasters in charge of post offices whose revenues fell below a legislated threshold continued to remain outside the jurisdiction of the Civil Service Act. The

(25) Ibid., p. 126-127. For a discussion of the Act, see J.E. Hodgetts, William McCloskey, Reginald Whitaker and V. Seymour Wilson, The Biography of an Institution -- The Civil Service Commission of Canada, 1908-1967, McGill-Queen's University Press, Montreal and London, 1972, p. 50 ff.

(26) Simpson (1988), p. 132.

appointment of these officials thus remained under the patronage of the powerful regional Cabinet ministers, such as C.D. Howe of the Lakehead area and Jimmy Gardiner of Saskatchewan, who flourished during the King and St. Laurent eras. The continued availability of such appointments contributed, indeed, to networks enabling the emergence of regional political chieftains. It was not until the late sixties that all post-masters' appointments were placed under the control of the Public Service Commission.(27)

Certain vestiges of the former role of the public service remain, although in most cases they have evolved to reflect meritocratic norms. Deputy heads of departments, for example, continue to be appointed by Order in Council. While responsiveness to prevailing political orientations is widely acknowledged to be a criterion in these appointments, the operational demands are sufficiently great to restrain partisan claims not supported by merit. As well, the public service continues to provide a haven for certain categories of ministerial staff, who qualify for priority placement. The actual recruitment and hiring process, in such cases, remains subject to public service norms and has thus been sanitized from earlier days when hirings could be at the direct request of political figures.

It has been widely argued that the establishment of the merit principle within the public service, in reducing its stock of lower and middle income patronage positions, favoured the transformation of patronage into an elite phenomenon.(28) The Civil Service Act, first of all, did not impede the exercise of patronage in the distribution of the traditional major positions, such as seats in the Senate, judgeships, lieutenant-governorships and ambassadorships. Its restriction of lower level patronage coincided, furthermore, with the beginning of a major expansion in the range of highly remunerated positions and relationships.

(27) See David Stewart-Patterson, Post-Mortem: Why Canada's Mail Won't Move, Macmillan of Canada, Toronto, 1987, p. 130 ff. See, also, Simpson (1988), p. 336-337.

(28) See for example, Reg Whitacker, "Between Patronage and Bureaucracy: Democratic Politics in Transition," Journal of Canadian Studies, Vol. 22, No. 2, Summer 1987, p. 66 ff.

The hiring of the Cockfield, Brown advertising agency in the 1930s by the Liberal party for the development of radio advertising opened up what would become an important new type of patronage. By the 1950s, it was a common practice for favoured agencies to donate key advisory personnel to parties at election time, and provide services at reduced cost, in return for lucrative government contracts following electoral victory. This pattern had been apparent since the war years, when Cockfield, Brown's service during the election had been followed by a highly remunerative role in the government's War Savings Campaign.⁽²⁹⁾ The relationship between parties and advertising agencies anticipated that which has more recently emerged between parties and polling firms, which has also created new forms of patronage available only to a limited number of specialists.

The emergence of the modern interventionist state in the decades following the great depression created further realms of patronage, much of it accessible primarily to social elites. Government growth involved, in addition to the rapid expansion of the regular public service, a dramatic increase in the number of Crown corporations offering generously rewarded positions on appointed boards of directors and in senior management positions. During the same period, a plethora of regulatory or quasi-judicial tribunals, boards, commissions and agencies created further positions for Order in Council appointees.

Assertions that the benefits of contemporary patronage tend to be enjoyed disproportionately by professional groups are further supported by the failure of the expanded application of the merit principle within the civil service to reduce the scope of patronage in the area of legal services. Appointments of standing agents continue, according to Simpson, to be "political decisions based on lists of lawyers drawn up in the office of the minister of justice upon recommendations from government MPs, defeated candidates and party officials."⁽³⁰⁾ After examining the 1979, 1980 and 1984 lists of standing agents, Simpson concluded that a change in the party in power continues to be accompanied by the virtually complete replacement of previous appointees. More lucrative varieties of

(29) Simpson (1988), p. 143.

(30) Ibid., p. 301.

legal employment, in the form of contracts to handle the business of Crown corporations and agencies, to represent the government in major cases, or to act as counsel for federal commissions continue, as well, to be awarded on a patronage basis.(31)

The patronage power in Canada today is exercised, first of all, by the Prime Minister with respect to about 350 prestige positions including lieutenant-governorships, Senate seats, senior judgeships, ambassadorships, deputy-ministerial posts, and heads of important agencies.(32) It is noteworthy that there is considerable variation in the weight given to partisan considerations in these appointments. Some, such as the selection of Supreme Court Justices, being effectively non-partisan, while others, such as the selection of Deputy Ministers, are preponderantly based on non-partisan considerations. There are, according to a compilation developed by the Conservative Party prior to the 1984 election, some 3,500 Order in Council positions, including those on boards, councils and commissions, and on the boards of some 400 Crown corporations and agencies.(33) These are normally made at the ministerial level, as are nearly 800 judicial appointments falling within the federal jurisdiction.(34)

The domain of Order in Council appointments is, as has been seen, supplemented by a more vaguely bounded realm consisting of government contracts, chiefly involving advertising, polling, legal work and other professional services. A comparatively recent addition, here, consists of access to politicians, sold by individuals operating as lobbyists and consultants. The sums involved in such work can be substantial. The 25 legal firms with the largest government billings during fiscal year 1984-1985, for example, received a total of over \$4,000,000.(35) While

(31) Ibid., p. 303-304.

(32) Whitacker (1987), p. 66.

(33) Simpson (1988), p. 26.

(34) Ibid., p. 300.

(35) Joseph Wearing, "Political Bucks and Government Billings: A Preliminary Enquiry into the Question of Linkage between Party Donations by Business and Government Contracts," Journal of Canadian Studies, Vol. 22, No. 2, Summer 1987, p. 147.

lower level patronage positions, such as those of part-time census-takers, enumerators and some summer jobs for students, continue to exist, they represent only vestigial remnants of once pervasive practices.

Patronage in Canada today is no longer a "political glue" bonding individuals together in mass parties. Its adhesive functions are largely confined to elites of political activists, or those whose services are of value in staging election campaigns.

COMPARISONS, OBSERVATIONS AND CONSIDERATIONS

The primary purpose of this section is to set out some central distinctions and lines of argument useful in considering political patronage and its possible reform. First, however, patronage practices in two other countries -- the United States and Great Britain -- will be briefly reviewed. Although the adaptability of such practices to the Canadian environment cannot be taken for granted, they present options which have been proven to be workable elsewhere.

A. Practices in the United States and Great Britain

1. The United States

The formal foundation of the presidential patronage power, as it relates to appointments, is set out in Article II, section 2 of the Constitution of the United States:

[The President] shall nominate and by and with the advice and consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.(36)

(36) Cited in G. Calvin Mackenzie, The Politics of Presidential Appointments, The Free Press, New York, 1981, p. xiii.

While the wide-open spoils system associated with Andrew Jackson and the emergence of modern parties has been curtailed in successive waves of reform, placing most lower level public service positions under bureaucratic control, the President still submits in excess of 75,000 nominations to the Senate annually for approval.⁽³⁷⁾ Most of these concern routine hirings or promotions within the armed services, the Foreign Service or the Public Health Service, for which the President plays no active role in the selection of nominees. An incoming President does, however, retain an active role in the selection of approximately 5,000 appointees including Cabinet and sub-cabinet officers, heads of independent agencies and members of regulatory commissions, directors of government corporations, ambassadors and federal judges.⁽³⁸⁾ Also included in this number are a quota of 10% of the Senior Executive Service (senior management personnel) amounting to about 700 positions and 1,665 Schedule C positions, which involve confidential or policy-related functions below the senior executive level. SES and Schedule C appointments were made by department and agency heads through the mid-sixties, but have been subjected to progressively more stringent central control in recent years and are now, in effect, presidential appointments. These latter categories of appointment allow an incoming administration to place political appointees throughout the bureaucracy, in order to monitor work at lower levels.⁽³⁹⁾

Two major contrasts can be drawn between Canadian and American patronage practices. First of all, it is generally taken for granted by Americans that use of the power of patronage appointment is an appropriate means by which the President can assert control over the public service. While individual appointments generate public controversy on

(37) See John W. Macy, Bruce Adams, and J. Jackson Walter, America's Unelected Government -- Appointing the President's Team, Ballinger Publishing Company, Cambridge, Massachusetts, 1983, p. 5-6.

(38) Colin Mackenzie, "Bush Head Hunters Set to Decide Who Will Get the Spoils of Victory," Globe and Mail (Toronto), 18 January 1989, p. A1 and A8.

(39) James P. Pfiffner, "Political Appointees and Career Executives: The Democracy-Bureaucracy Nexus in the Third Century," Public Administration Review, Vol. 47, No. 1, January/February 1987, p. 58.

occasion, this does not appear to have undermined the legitimacy of the patronage process.

Scholarly criticism of the process has focused, for the most part, on the need for piecemeal improvements. It has been argued, for example, that seemingly ad hoc selections based on no consistent criteria should be replaced with a more systematic and methodical recruitment of executive and managerial talent, and that Senate review is too frequently merely a pro forma exercise.⁽⁴⁰⁾ The legitimacy of patronage appointments is not, itself, widely questioned. It is noteworthy, in this connection, that the trend in recent years has been towards an expansion rather than a curtailment of the power of presidential patronage. Schedule C appointments did not exist prior to the 1950s, and the overall number of presidential appointments has grown steadily since before World War II.⁽⁴¹⁾

A second contrast concerns the review of appointments. In the United States the power of the Senate to withhold consent to certain categories of presidential appointment is constitutionally entrenched (see above). In practice, negative votes by committees, or by the Senate as a whole, are rare, as are the postponements of committee votes (and thus confirmations), which remain a prerogative of any Senate committee member who is unprepared to vote.⁽⁴²⁾ While most Senate hearings last no more than half an hour and involve relatively cursory questioning, the relatively loose partisan ties characteristic of the U.S. system have enabled Senate committees to emerge as credible independent participants in the appointment process. Appointments which generate significant committee opposition (or resulting public controversy) are frequently withdrawn before they come to a vote.

As a result of recent House of Commons procedural reform, Canada has moved cautiously in the direction of legislative review, endowing standing committees with the power to review Order in Council

(40) See, for example, criticisms in Ibid., p. 63 ff and G. Calvin Mackenzie (1981), p. 210 ff.

(41) Pfiffner (1987), p. 58.

(42) Macy et al. (1983), p. 58-61.

appointments within a limited number of categories. The new role of committees remains, however, subject to future amendment of the Standing Orders and, in any case, involves only the power to report committee findings and recommendations to the House. While the heightened partisan imperatives associated with a parliamentary system of government have sometimes been apparent, committee hearings have focused public attention on appointments and are thus, as in the United States, likely to foster more judicious use of the patronage power.

2. Great Britain

The historical foundation of British patronage lies in the sweeping medieval prerogatives of the monarch, expressed in the doctrine that the administrative arm of the government, and indeed the ministers who presided over it, constituted the King's government. By the late eighteenth century, the application of this doctrine over eight centuries had resulted in a gothic structure of positions, many of which involved no active duties other than the collection of fees and the appointment of deputies to perform the work.⁽⁴³⁾

The Economical Reform movement which arose after 1780, focused on the abolition of sinecures and began the process of distancing the administration from politics -- a process which was substantially complete before the rise of organized political parties. The use of appointment powers for partisan purposes thus never emerged in Britain to the extent later seen in Canada. The conferring of honours developed as a substitute form of patronage and, although now largely de-politicized, continues to reward partisan service in some instances.⁽⁴⁴⁾

The contemporary structure of patronage appointments in Great Britain is, at least formally, closely similar to that of Canada. The appointment power concerning the major remaining appointive positions

(43) Samuel E. Finer, "Patronage and the Public Service in Britain and America," in Arnold J. Heidenheimer, Michael Johnston, and Victor T. LeVine, Political Corruption -- A Handbook, Transaction Publishers, New Brunswick, N.J., 1989, p. 102-104.

(44) See Peter G. Richards, Patronage in British Government, University of Toronto Press, Toronto, 1963, p. 31-33.

has gravitated, in practice, from the hands of the monarch into the hands of the Prime Minister. Among those whom the Prime Minister effectively appoints, in addition to cabinet ministers and occupants of other intra-parliamentary positions, are senior civil servants (department heads or equivalent), senior judges and diplomats, life peers, and bishops.⁽⁴⁵⁾

The rise of the modern interventionist state has been accompanied by a dramatic expansion of ministerial patronage, as a result of the proliferation of advisory bodies, administrative boards and commissions, and quasi-judicial tribunals. The number of paid appointive positions involved at this level has been estimated at between 8,000 and 9,500, while estimates of the number of unpaid positions range from 25,000 to just over 30,000. Of the paid positions, only about 280 are full-time, and many of the others involve payment for expenses only.⁽⁴⁶⁾ While these appointments remain formally in the hands of Ministers, the sheer weight of numbers has resulted in the devolution of effective decision-making authority, in some instances, to public servants, with the Minister intervening only intermittently and with respect to positions of major importance. The process is centralized in the hands of the Public Appointments Unit of the Civil Service Department, which maintains a central list of potential appointees deemed suitable, although the criteria employed are not made public and Ministers are entitled to select candidates from other sources if they prefer.

A major contrast between patronage in Great Britain and Canada concerns the level of partisanship, and attendant public controversy, involved. The large number of lower level patronage appointments has compelled the de facto transfer of discretion over them into the hands of bureaucrats who, in turn, often rely on advice from interested groups. The absence of significant financial reward for appointments also militates against their use as political "plums." In many cases they are of interest

(45) Ibid., various pages.

(46) Anne Davies, "Patronage and Quasi-Government: Some Proposals for Reform," in Anthony Barker, ed., Quangos in Britain -- Government and the Networks of Public Policy-Making, The Macmillan Press, London, 1982, p. 170.

to individuals only as they are related to personal or professional commitments.

For high profile and more highly-remunerated positions the constraints on political discretion imposed by operational demands, and the possibility of criticism in Parliament, have been generally effective in discouraging controversial appointments. While one study refers to a "widely felt cynicism that in order to get a public appointment, 'it's not what you know but who you know,'" it is acknowledged that political patronage has excited little public attention or protest.⁽⁴⁷⁾

B. Analytical Remarks

This section explores the claim, made at the outset of this paper, that all patronage is not the same. It then examines an assumption, increasingly evident in media commentary and in some reform proposals, that the merit system provides an alternative to patronage, and that merit system appointments should fully replace patronage appointments. Finally, major options for the improvement of existing patronage arrangements are reviewed.

1. Some Patronage Variables

The assumption that distinctions between types of patronage either cannot be made, or are of no significance in the evaluation and possible reform of particular patronage practices, is open to considerable doubt. Differences among categories of patronage appointment in Canada, and variations among Canadian practices and those prevalent elsewhere, suggest that patronage relationships can be highly diverse. Thus it may be too simplistic to view all instances of patronage negatively, or to assume that all patronage practices are equally needful of reform. Following is an attempt to set out some of the key variables according to which patronage practices can be distinguished.

The degree of discretion exercised by the patron is one important respect in which patron-client relationships vary. Where an appointive position, for example, involves stringent operational demands

(47) Ibid., p. 167 and 169.

and performance requirements, or is the object of vigilant attention by influential interest groups, the discretion exercised by the formal source of appointments may become substantially constrained. Current practice with respect to appointments of Deputy Ministers or Supreme Court Justices, suggests that patronage practices can become virtual formalities, operating de facto as informal and unstructured meritocratic processes. At the other extreme would be appointments subject to little or no constraint, which may thus be made on the basis of non-partisan, partisan or purely personal considerations, and which may assign different weights to these considerations from one decision to the next.

The degree to which partisan considerations govern a patronage decision is a variable closely related to the discretion exercised by the patron, but is not identical to it. A patron remains free, after all, to exercise discretion in a non-partisan manner, although the expectations of partisan colleagues may impose practical constraints on this freedom. The expectations of party activists are, in turn, influenced by their perceptions of the degree of discretion possessed by potential patrons, and by established cultural norms. Great Britain, which never developed a "spoils system" and where expectations that partisan considerations would govern appointments remained correspondingly more restrained, may illustrate the option of discretionary non-partisanship. The obvious extremes here are, on the one hand, the absence of partisan considerations and, on the other, their employment to the exclusion of all others.

The size of the net benefit conferred upon a client (or net cost sustained by the public) is a further important variable in patronage decisions. The patronage "plums" widely decried in the Canadian media attract hostile public attention, in part, because they are perceived to involve publicly funded benefits to the client which are disproportionate to past or anticipated public services. It is noteworthy, in contrast, that the modest levels of remuneration characteristic of patronage positions in Great Britain generate substantially less public outcry. The polar extremes of patronage, with respect to benefits, are patronage involving maximal benefits to the recipient in return for minimal future public service, and patronage involving the reverse.

Patronage practices, it may be concluded, are not all the same. Political patronage involving limited or non-existent discretion on the part of the patron, low levels of apparent partisanship, moderate net benefits to the recipient and moderate net costs to the public exists widely in Great Britain and the United States as well as Canada, and attracts little attention. The growing tendency in Canadian political discourse to discuss patronage in generic terms, and itemize evils ascribed to patronage in general, is thus misguided. It is also potentially counterproductive since it directs attention away from specific features of specific instances of patronage which might be remediable and away from the possibility that some of these features may also exist within non-patronage parts of our political process. It finally raises the danger that seemingly harmless, or even beneficial, practices will be disposed of merely because, in a formal sense, they belong within the realm of patronage.

2. The Merit System: Always an Alternative?

The view that "[patronage] leads to the dilution of the merit system of recruitment," and "will never be a good substitute for a thorough and full-fledged merit system of appointment," is widely held.⁽⁴⁸⁾ It supports convictions that, in an ideal world, merit systems would entirely replace patronage as a basis for appointment, and that our failure to attain such a world can be ascribed to nothing more fundamental than partisan self interest combined with public inertia.

The following section develops some criticisms of the conviction that merit systems should replace patronage. These criticisms do not consider the possible superiority of merit systems to patronage systems in general, since this remains highly conjectural except in the context of particular appointments and required competencies. Instead, the criticisms focus on a logically prior question: can all appointments be merit-based? If they cannot, then the conviction that merit systems should replace patronage must either be made subject to exceptions, or rejected entirely.

(48) P.K. Kuruvilla, "Fewer Plums," Policy Options, April 1986, p. 24-25.

For the purposes of the present discussion, a merit system will be taken to be one in which "appointments ... and promotions [are] made, not by the government, but by an independent [body], and [are] based, not on political nomination or influence, but on a competitive assessment of individual qualifications and characteristics that are clearly related to the work that has to be performed." (49)

The view that merit systems can (and should) replace patronage arrangements assumes, first of all, that the two are mutually exclusive and competing alternatives. It has been seen, however, that patronage decisions may closely rely on advice obtained through consultation with professional or other qualified groups, and on recommendations developed within bureaucratically administered merit systems. Sometimes, for example in lower level appointments in Great Britain, the role of the patron may become purely formal (although the discretionary power to override recommendations remains). Such cases may be seen as genuine hybrid arrangements, involving what may be termed "meritocratized patronage." The possibility of such arrangements suggests that patronage and merit need not always be seen as mutually exclusive and competing methods of appointment. In some cases, it may be appropriate for the two methods to have complementary roles.

The view that merit systems can replace patronage presupposes that merit systems are applicable to all appointment decisions which could otherwise be made through patronage. Otherwise, merit could not be viewed as a (superior) substitute for patronage.

The assumption that merit systems are applicable to all appointment decisions appears, however, to be problematical. Competitive testing appears to be ideally suited to the staffing of positions involving determinate skills and quantifiable performance, since the tasks incorporated within a test can closely replicate the tasks involved in the position itself. For other positions, however, competitive testing might be seen as successfully identifying those adept at performing on tests but not necessarily those adept at fulfilling the duties of the position. Though

(49) J.D. Love, "The Merit Principle in the Provincial Governments of Atlantic Canada," Canadian Public Administration, Vol. 31, No. 1. Fall 1988, p. 336.

reliance on additional information, such as academic credentials and experience, may sometimes mitigate this problem, many hiring decisions require highly subjective interpretations of the evidence, and are by no means the result of mechanical processes enshrining the concept of merit. The staffing of managerial positions, where personality characteristics may be as critical as operational skills, is the most obvious example of this larger reality. More problematical still are Deputy Minister or equivalent positions, which combine elements of management with leadership functions involving the broad implementation of government policy and which require, particularly in the case of independent or "arms length" entities, sensitivity and responsiveness to public attitudes and demands.

Proponents of meritocratic appointments may acknowledge these difficulties, but reply that the complexity of reaching merit decisions does not warrant a reversion to partisan political decision-making. This argument may be persuasive for administrative or professional positions, where the concept of merit remains complex but intelligible. For positions involving leadership and public responsiveness, however, it may miss the point. Such appointment decisions are necessarily so dependent on personal judgement that they closely resemble patronage decisions. Accordingly, some argue that the practical alternative to political patronage is bureaucratic patronage. This is not obviously a preferable arrangement, however, since it does not involve the accountability to Parliament and the public to which political agents are ultimately subject.⁽⁵⁰⁾

Nor is another option -- the devolution of appointment responsibilities to client groups -- more attractive. While, for example, artists may be qualified to determine the artistic merit of other artists, it is not obvious that they are specially fitted to determine the role and direction of government support for the arts (or to select those who make such decisions). It may thus be argued that, for some types of appointment, merit systems are not so much an alternative to patronage as a disguised and unaccountable form of patronage. The assumption that all

(50) See, for example, comments by William Neville in "Panel on Patronage," Journal of Canadian Studies, Vol. 22, No. 2, Summer 1987, p. 191.

patronage appointments could be made through merit systems must therefore be rejected.

It may thus be claimed that patronage -- either overt or covert -- is an unavoidable element in some appointment decisions. As Norman Ward, a well-known Canadian political scientist, has bluntly declared: "The simple truth is that patronage is inevitable, and not just in democracies."⁽⁵¹⁾

3. Reform Options: Some Considerations

It has been argued thus far that patronage can take a number of significantly different forms, that all forms should not be condemned because of the deficiencies of some, and that the most commonly recommended alternative to patronage -- the merit system -- is not credible as an alternative to all forms of patronage. It would seem to follow that the reform of patronage ought not to involve the imposition of one standard decision-making method for all appointments. Instead, individual processes need to be examined to determine the need for and appropriate character of reform. An exploration of the three critical variables identified earlier in this discussion may contribute much to the case-by-case review recommended here. Patronage which does not involve excessive discretion, partisanship or public cost may not require reform at all. Patronage which violates one of these requirements may require modification or, where it is concluded that political agents should exercise no discretion and/or no public costs are justifiable, elimination.

Reform proposals in Canada have focused on the related variables of discretion and partisanship, leaving the more material consideration of remuneration aside. The focus on discretion and partisanship has been associated, in turn, with the advocacy of two general approaches to reform: constraining the discretion (and, presumably, partisanship) of political patrons by exposing them to expert advice and merit-based recommendations, and subjecting patronage decisions to multi-partisan review, and attendant public scrutiny. These approaches warrant separate discussion.

(51) Norman Ward, "Patronage: Gentle Reflections," Journal of Canadian Studies, Vol. 22, No. 2, Summer 1987, p. 182.

a. Advisory Bodies

The Canadian Bar Association has called on several occasions for a formalized consultative and advisory process for judicial appointments. In a 1985 Special Committee Report, the Association advocated the creation of advisory committees, chaired by a chief justice from the relevant court system and composed of a combination of government appointees, legal profession and Bar Association appointees, and "lay people representative of the public," to be selected by other advisory committee members.⁽⁵²⁾ The general process recommended was that committees would consider nominees from diverse sources, including the Minister of Justice, and would also actively seek out potential candidates. With the exception of Supreme Court appointments (where fewer than three names, or "no name at all, if ... deemed appropriate" would be submitted) committees would submit lists of three or more nominees to the Minister of Justice, who would be expected either to select a name or request further committee recommendations.

The report leaves some details undefended: it does not, for example, explain what would qualify initial appointees to exercise the patronage power involved in selecting representatives of the public. Its broader arguments in favour of advisory committees usefully outline, however, the benefits of such arrangements. It is argued that the secrecy and lack of formal structure of the current patronage process governing judicial appointments fosters public cynicism concerning appointees, even where they are eminently qualified. It is argued that advisory committees would mitigate the appearance of partisanship in appointments, and would in fact prevent partisan influences from displacing considerations of competence. It is argued, as well, that formalized advisory committees would open the door to more candidates -- both those affiliated with opposition parties and those without political affiliations -- thus expanding the judicial talent pool and increasing the likelihood of superior appointments. Such

(52) Report of the Canadian Bar Association Committee on the Appointment of Judges in Canada, The Canadian Bar Foundation, Ottawa, Ontario, 1985, p. 66-68.

committees, the report argues, would thus operate to safeguard public respect for the judicial system and achieve functional improvements.

Appropriately modified, the advisory committee structure recommended by the Canadian Bar Association for judicial appointments could be applied widely to other appointments. Its general justification, the need to give primary emphasis to professional competence, openness and the minimization of overt partisanship, would appear, similarly, to have wide-ranging applicability.

There is broader significance, as well, in some shortcomings of the Bar Association proposals. The report argued that recent developments, including the coming into effect of the Canadian Charter of Rights and Freedoms, would place a growing range of social and political issues before the courts. The enhanced role of the courts in adjudicating such issues makes it particularly necessary to take special precautions against government attempts to "stack the courts with people of their own ideological persuasion in an effort to influence the outcome of decisions on contentious social issues." (53)

This is a troubling argument. It recognizes that political sensitivity and judgment have become newly important in judicial appointees, but seeks more strongly to remove these from the only influence which credibly reflects these qualities -- that of democratically elected political agents. The new importance of political sensitivity in judicial decisions would as clearly support a contrary argument: that elected politicians should retain sufficient discretion to ensure the responsiveness of the judicial system to contemporary trends in public opinion. The most acceptable means of accomplishing this would be their retention of the capacity to ensure that political sensitivity is an element in judicial selection. This may suggest that the entitlement to appoint persons not named on advisory committee lists, and to justify such appointments before Parliament and the public, remains desirable.

The general observation which emerges here is that the appointments function of an advisory committee is to constrain discretion by subjecting it to advice, rather than to prevent its being exercised or

(53) Ibid., p. 61.

to restrict its exercise to the point where it becomes a virtual formality. Where it is established that discretion should be removed from political decision-makers, then the appropriate solution is not an advisory committee structure at all, but a formal merit system of appointments entirely divorced from political influence.

b. Public Scrutiny

The procedural reforms endowing standing committees with the power to review specified categories of Order in Council appointment have taken Canada a considerable distance in the direction of parliamentary and public scrutiny. It remains unclear, however, whether this process goes far enough, excluding from review only those appointments concerning which there are compelling reasons for exclusion.

The final Report of the Special Committee on Reform of the House of Commons (1985), upon which recent reforms are based, asserts that "there are good reasons for excluding certain appointments from any political scrutiny process at this time."⁽⁵⁴⁾ These reasons remain, however, unstated, although the discussion of problems affecting the American system of Senate confirmation may provide some clues. Among the problems mentioned are, first, that there may be an excessive number of appointments subject to review, and second, that the rigours of public review may discourage some potential candidates from allowing their names to be considered. These problems, however, do not clearly favour the exemption of any particular category of appointment from scrutiny.

Other discussions do not take us much further. The Special Committee of the Canadian Bar Association, in its 1985 report, simply declared that:

Parliament should not play a role in the selection or appointment of federal judges. It is neither necessary nor desirable for the legislative branch to be involved. It is contrary to the Canadian tradition for the appointment of judges to be subjected to a

(54) Canada, House of Commons, Report of the Special Committee on Reform of the House of Commons, Queen's Printer, Ottawa, 1985, p. 31.

congressional-type process of public examination and review.(55)

This is a peculiar declaration. If we accept its apparent assumption that adherence to the Canadian tradition should be the sole consideration in determining patronage arrangements, then none of the reform proposals advocated elsewhere in the report can be embraced. Arguments which might justify the Canadian tradition are, however, not provided.

Nor is it immediately obvious what such arguments might be. It might be claimed that partisan scrutiny by a committee is unbefitting the dignity inherent in judicial positions, and would discourage able candidates from allowing their names to stand. It is not obvious, though, that the dignity of judicial positions so vastly exceeds that of, for example, Deputy Ministers that parliamentary scrutiny is inappropriate only for the former. It can be further argued that the general political (as distinct from partisan) orientations of judges are increasingly likely, in some cases, to inform their decisions and are therefore likely to become subject to public discussion. Individuals who view such discussion as an assault upon the dignity of the judiciary may no longer be suitable as judges. It can be suggested, finally, that congressional scrutiny of judges -- and specifically of their general ideological and political orientations -- has not engendered a scarcity of judicial candidates in the United States.

It may be concluded, then, that reformers who accept the value of publicity in the patronage process need not accept present restrictions on the scope of committee review. Indeed, they should not assume the need for any restrictions, pending the development of arguments setting out compelling reasons for exempting particular categories of appointment from parliamentary review.

c. Other Possibilities

The constraint of discretion and partisanship through their subjection to advice, and through the creation of formal structures of public review, are by no means the only possible reforms of patronage. The distinction, explored above, between discretion and partisanship suggests a

(55) Canadian Bar Association (1985), p. 66.

third possibility. There may be appointments concerning which political discretion can be justified, but for which specifically partisan decisions may be unacceptable. An example might be a position requiring a sensitivity and responsiveness to public opinion more than any technical competence, but yet also requiring demonstrable non-partisanship.

Reform, in such a case, might incorporate an element of multi-partisanship within the appointment process. This could be done through the creation of multi-partisan advisory committees (subject, perhaps, to the requirement that they submit recommendations only after achieving unanimous agreement). Such advice might constrain the partisanship of appointments, yet enable priority to be given to broadly political considerations.

Bi-partisanship is commonly achieved within the American process of Senate review, in part because of the relatively loose party affiliations to which Senators are subject. It might be argued, on behalf of this "third option" for reform, that specific structures need to be created within in Canadian parliamentary government if partisanship is to be reduced while political discretion is retained.⁽⁵⁶⁾

It may be appropriate, given the subject of this paper, to conclude with a comment about money. The somewhat theoretical discussion above should not distract us from the importance of remuneration in patronage arrangements. There can be little doubt that much of the history of Canadian patronage, and a substantial component of current public hostility to patronage appointments, is explained by their level of reimbursement. It can thus be suggested that reformers could achieve a major impact on the attitudes of patrons, clients and the Canadian public by including this aspect of patronage within the scope of reform.

(56) A more radical version of this option is suggested by Bradley Willis in "What to Do about Patronage," Policy Options, January/February 1983, p. 17-18. Willis advocates dividing up patronage appointments among the parties, in proportion to their numbers of seats in the House. This approach would give each party a fair share of the spoils but it would do so only by placing some public positions in the hands of parties to which the Canadian public has denied a mandate to govern.

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